

## CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number \_\_\_\_\_

Meeting Type: Regular

Meeting Date: 5/23/2013

Action Requested By:  
Legal

Agenda Item Type  
Resolution

Subject Matter:

Lot Sale and Purchase Agreement of East Clinton Elementary School

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute an Agreement for the Sale and Purchase of East Clinton Elementary School between the Huntsville City Board of Education and the City of Huntsville.

**Note: If amendment, please state title and number of the original**

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: 1,500,000

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: \_\_\_\_\_ Date: \_\_\_\_\_

RESOLUTION NO. 13-\_\_\_\_\_

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor is hereby authorized to execute an Agreement for the Sale and Purchase of East Clinton Elementary School, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said document is substantially in words and figures similar to that certain document attached hereto and identified as a "Agreement for the Sale and Purchase of East Clinton Elementary School between the Huntsville City Board of Education and the City of Huntsville", consisting of Six (6) pages, and the date of May 23, 2013 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 23rd day of May, 2013.

\_\_\_\_\_  
President of the City Council of  
the City of Huntsville, Alabama

ADOPTED this the 23rd day of May, 2013.

\_\_\_\_\_  
Mayor of the City of  
Huntsville, Alabama

STATE OF ALABAMA     )  
  )  
COUNTY OF MADISON    )

**AGREEMENT FOR THE SALE AND PURCHASE OF  
EAST CLINTON ELEMENTARY SCHOOL**

THIS AGREEMENT FOR THE SALE AND PURCHASE OF EAST CLINTON ELEMENTARY SCHOOL (the "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2013 (being the Effective Date hereof), by and between the Huntsville City Board of Education, a political subdivision of the State of Alabama ("Seller") and the City of Huntsville, Alabama, a municipal corporation ("Purchaser").

**WITNESSETH**

FOR AND IN CONSIDERATION of the sum of Ten Thousand and No/100 Dollars (\$10,000.00) cash ("Earnest Money"), this date in hand paid by Purchaser to Broker (as hereinafter defined), and other good and valuable consideration, the receipt and sufficiency of all of which is hereby expressly acknowledged by Seller and Purchaser, and intending to be legally bound hereby, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, upon the mutual agreements, conditions, covenants, provisions and terms set forth herein, the following-described tract or parcel of real property situated and lying and being in the City of Huntsville, County of Madison, State of Alabama, to-wit:

605 East Clinton Avenue, Huntsville, Alabama, being Madison County, Alabama Tax Parcel No. 1407361005067000, PPIN 133890

(the "Property").

THIS Agreement is made upon the following agreements, conditions, covenants, provisions, representations and terms:

1. **Purchase Price.** The purchase price for the Property (the "Purchase Price") is One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00). The Purchase Price shall be due and payable by Purchaser to Seller at closing in immediately available funds by Federal wire transfer, or cashier's check.
2. **Earnest Money.** Within five (5) days after Purchaser's approval of this Agreement which has been executed by Seller, Purchaser shall deliver to and deposit with Bill Poole Realty, in Huntsville, Alabama ("Broker"), the sum of Ten Thousand and No/100 Dollars (\$10,000.00), being the Earnest Money for and of this Agreement. Broker shall promptly notify Seller and Purchaser in writing via United States First Class Certified Mail, Return Receipt Requested, postage prepaid, of Broker's receipt of the Earnest Money. Broker shall hold and disburse the Earnest Money in strict accordance with this Agreement, and shall be paid no fee by Seller or Purchaser for services rendered and expenses incurred in holding said Earnest Money.

In the event that Purchaser does not terminate this Agreement within the Inspection Period as provided in Paragraph "3" below, the Earnest Money paid upon execution of this Agreement, shall become Non-Refundable and shall be Seller's sole and exclusive property, but shall be credited to the Purchase Price at Closing.

Broker shall deliver the Non-Refundable Earnest Money to Seller upon demand.

3. **Inspection Period/Property Evaluations.** During the ninety (90) day period immediately following the Effective Date hereof (the "Inspection Period"), Purchaser shall have the privilege of going upon the Property with its agents or engineers as needed to inspect, examine, survey and otherwise do whatever Purchaser deems necessary in the engineering, planning, and land use planning, for use and/or development of the Property. Said privilege shall include the right, at Purchaser's sole expense, to conduct borings, environmental site assessments, geotechnical investigations, percolation tests, soil tests and other reasonable tests to obtain other information to determine surface, subsurface and topographic conditions (collectively the "Property Evaluations"), provided said Property Evaluations do not affect the marketability and/or safety of the Property.

In the event Purchaser does not terminate this Agreement within the Inspection Period, the Earnest Money paid upon execution of this Agreement shall become Non-Refundable Earnest Money as provided in Paragraph "2" above, and, at all times, shall be Seller's sole and exclusive property, but shall be credited to the Purchase Price at Closing.

Upon completion of such Property Evaluations, Purchaser, at its cost and expense, shall restore the Property to its preexisting condition and state. Purchaser shall indemnify and hold Seller harmless from and against any claims, liens, damages or losses incurred by Seller as a result of the Property Evaluations and persons or firms entering the Property on Purchaser's behalf in regard to the Property Evaluations. Within ten (10) days of receipt of the same, Purchaser, at no cost to Seller, shall furnish Seller copies of all written reports evidencing the Property Evaluations and the findings and results thereof including, but not limited to, written appraisal reports, each of which such reports shall be also addressed to, and for reliance by, Seller and Purchaser. If any of the Property Evaluations indicate conditions to be unsatisfactory to

Purchaser for Purchaser's contemplated use, then within the Inspection Period Purchaser may cancel this Agreement, whereupon Seller and Purchaser shall have no further claim or right against, or liability to, each other for and on account of this Agreement and/or the Property (aside from the above indemnity obligations) and this Agreement shall be terminated and the Earnest Money paid to Purchaser.

4. **Condition of Property.** Except for the condition of title to the Property as set forth in Paragraph "5" below, the Property is sold "AS IS" and "WHERE IS" without any representation or warranty, express, implied or otherwise, by Seller. Seller makes no representations or warranties, express or implied, regarding the condition (environmental, geotechnical, wetlands, or otherwise) of the Property. Seller shall have no duty, liability, obligation and/or responsibility to Purchaser or any other person or entity regarding the condition (environmental, geotechnical, wetlands, or otherwise) of the Property.

5. **Title to Property.** Purchaser, at its cost and expense, may have the title to the Property examined and if there are defects in title (the "Title Defects") to the Property (other than the Permitted Title Exceptions set forth in Paragraph "10" hereof) which can be cured as herein provided, Purchaser shall notify Seller of the same in writing on or before sixty (60) days after the Effective Date hereof. At said time Purchaser, at no cost to the Seller, shall also furnish Seller copies of all evidence of title to the Property, including, but not limited to, recorded documents, preliminary title opinions and/or title insurance binders or commitments which reflect all such Title Defects. If the curative work to resolve such Title Defects will require more than the time provided for closing of the transaction evidenced hereby, the Closing Date shall be extended for a reasonable period of time in which to cure such Title Defects, but in no event longer than thirty (30) days after the original Closing Date. If such Title Defects are of such a nature they (a) cannot be cured, or (b) cannot be cured within a reasonable period of time, but in no event longer than thirty (30) days after the original Closing Date, or (c) will cost Seller in excess of One Thousand and No/100 Dollars (\$1,000.00) to cure in the aggregate, then:

a. Seller may cancel this Agreement, whereupon Seller and Purchaser shall have no further claim or right against, or liability to, each other for and on account of this Agreement and/or the Property, Purchaser shall be paid the Earnest Money, and this agreement shall be terminated; and/or

b. Purchaser may either (a) cancel this Agreement, whereupon Seller and Purchaser shall have no further claim or right against, or liability to, each other for and on account of this Agreement and/or the Property, Purchaser shall be paid the Earnest Money, and this Agreement shall be terminated, or (b) elect to purchase the Property and pay the full Purchase Price as set forth in Paragraph "1" hereof in which event Purchaser shall be deemed to have waived such of said Title Defects which have not then been cured and Seller shall have no duty, liability, obligation and/or responsibility for the same, and such waived Title Defects shall become Permitted Title Exceptions in the Warranty Deed.

6. **Title Insurance.** Purchaser, at its cost and expense, shall order and procure any and all commitments and/or policies of title insurance pertaining to the Property which are required for the transaction evidenced hereby. Seller shall not be responsible for the cost, expense and/or policies of title insurance or any other evidence of title pertaining to the Property. Purchaser, at its cost and expense, shall furnish Seller copies of said commitments and all Exceptions listed therein as provided in Paragraph "5" above.

7. **[INTENTIONALLY DELETED]**

8. **Closing Date.** Unless extended as provided for in Paragraph "5" hereof, the transaction evidenced hereby shall be closed and fully consummated any business day within thirty (30) days subsequent to the end of the Inspection Period mutually agreed upon by Seller and Purchaser. Said Closing shall be held in Huntsville, Alabama, at a time mutually agreed upon by Seller and Purchaser (the "Closing Date"), but, in no event, later than September 30, 2013.

10. **Closing Documents.** At the closing of the transaction evidenced hereby on the Closing Date, Seller and Purchaser shall execute and deliver to each other the following documents (the "Closing Documents"):

a. Seller shall execute and deliver to Purchaser the following documents:

i. A statutory warranty deed prepared by Seller's counsel (the "Warranty Deed") warranting that Seller has fee simple title in and to the Property and that the Property is free and clear of all liens and encumbrances permitted or suffered by Seller except for, and subject to, the following Permitted Title Exceptions:

A. Easements, minimum building set back lines, restrictions and rights-of-way of record in the Office of the Judge of Probate of Madison County, Alabama and such state of facts as would be disclosed by an accurate survey of the Property;

B. Applicable provisions of (i) The Zoning Ordinance, (ii) The Subdivision Regulations, (iii) The Stormwater Management Manual and (iv) other land use laws, statutes regulations and rules, of the City of Huntsville, Alabama, Madison County, Alabama, the State of Alabama and the United States of America, all as last amended;

C. Such Title Defects as Purchaser may have waived pursuant to Paragraph "5" hereof;

(The foregoing and immediately preceding subparagraphs A. through C., inclusive, are herein referred to, separately and severally, and collectively, as the "Permitted Title Exceptions");

ii. An affidavit establishing that Seller is not a "foreign person", as that term is defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, and otherwise in form and content sufficient to eliminate Purchaser's withholding obligations under said Section 1445 with respect to the sale and purchase of the Property; and

b. Seller and Purchaser shall also execute and deliver to each other any and all other documents deemed reasonably necessary by Seller or by Purchaser to consummate the transaction evidenced hereby in accordance with this Agreement including, but not limited to, closing statements, modified seller/owner affidavits, and Internal Revenue Service Reporting forms, if applicable.

Each of the Closing Documents shall be prepared at Purchaser's cost and expense by Purchaser's counsel except for the Warranty Deed. All Closing Documents shall be in form and substance acceptable to Seller and Seller's counsel.

11. Closing Costs. Closing Costs shall be paid by Purchaser. Except as provided below, the term "Closing Costs" shall include, but is not limited to, Purchaser's attorney's fees, percolation tests fees, Property Evaluation costs and expenses, and costs of compliance with any other land use laws, ordinances, or regulations, appraisal fees, document recording fees and deed recordation taxes payable to the Probate Judge of Madison County, Alabama, and other governmental authorities for recording of documents, the cost of preparation of all documents to be used in the transaction evidenced hereby, all charges associated with the financing of Purchaser's acquisition of the Property, and generally all costs and expenses associated with or resulting from Purchaser's acquisition of the Property. Provided, however, the term "Closing Costs" shall not include (a) Seller's attorney's fees or (b) the cost of preparation of the Warranty Deed required by Paragraph "10" hereof, both of which shall be paid by Seller at Seller's sole cost and expense.

12. Ad Valorem Taxes. Seller shall pay all ad valorem taxes in regard to the Property for the ad valorem tax years 2012 and prior thereto. Ad valorem taxes in regard to the Property for the 2013 ad valorem tax year (as shown by the latest available tax assessments) shall be prorated between Seller and Purchaser as of the Closing Date on the basis of a 365 day year, but, if applicable, shall be paid by Purchaser. Purchaser shall pay ad valorem taxes in regard to the Property for the ad valorem tax years 2013 and subsequent thereto, if applicable.

13. Representations and Warranties.

a. Seller states unto Purchaser that, to the best of Seller's actual knowledge, without investigation or inquiry:

i. Except for the Permitted Title Exceptions, there are no encumbrances on the Property; and

ii. Seller has not received any notice nor does it have any knowledge of any violations of any law, zoning ordinance, building code or regulation affecting the Property, nor does Seller have any knowledge of any condemnation proceedings involving the Property.

b. Purchaser represents and warrants unto Seller:

i. That as of the date of its execution of this Agreement it is, and that as of the Closing Date it will be:

A. A municipal corporation in the State of Alabama.

B. Legally authorized to hold title to, and to accept a conveyance of, the Property;

C. Legally and duly authorized to enter into this Agreement; and

D. Legally and duly authorized to execute and deliver all documents necessary for the consummation of the transaction evidenced hereby.

ii. That each and every one of the persons, officers, and/or representatives of Purchaser signing this Agreement and executing, acknowledging and delivering all documents at the closing of the transaction evidenced hereby, are and will be duly authorized and empowered to do so, and are and will be the only persons, officers, and/or representatives of Purchaser who are or will be required to sign this Agreement and said documents at the closing of the transaction evidenced hereby.

14. **Possession of Property.** Upon receipt of the Purchase Price as provided in Paragraph "1" above, Seller shall deliver to Purchaser full and exclusive possession of the Property on the Closing Date subject, however, to the Permitted Title Exceptions.

15. **Seller's Real Estate Commission:** In the events (a) this transaction is fully consummated, (b) the Purchase Price is received by Seller, and (c) the Warranty Deed is delivered by Seller to Purchaser, Seller shall pay a commission of four percent (4%) of the Purchase Price to Bill Poole Realty which is the Listing Broker in this transaction as and for the commission (hereinafter "Commission"). Except for the Commission, (i) neither Seller nor Purchaser shall have any duty, liability, obligation, or responsibility to any person, firm, or entity for payment of any broker's fee, commission, finder's fee, sales commission or other compensation, regarding the Property and/or this transaction, and (ii) Seller and Purchaser shall indemnify and hold harmless the other from and against any duty, liability, obligation, or responsibility for the same. At Closing, Seller and Purchaser shall execute certificates evidencing and confirming the foregoing. Seller shall be solely responsible for the payment of the Commission, and Seller and Purchaser shall be jointly responsible for obtaining execution of written waivers of lien for said Commission from Bill Poole Realty.

16. **Notices.** All notices (a) shall be in writing, (b) shall be deemed served on the date on which they are actually received, and (c) shall be served by (i) personal delivery, or (ii) United States First Class Certified or Registered Mail, Return Receipt Requested, properly addressed with postage prepaid or (iii) a nationally recognized overnight courier/delivery service (i.e. Federal Express, United Parcel Service, etc.) or (iv) telephonic transmission ("E-mail") or telephonic facsimile transmission ("Fax") in conjunction with one of the other methods of delivery set forth in subparagraphs (i), (ii) or (iii), each addressed as follows:

**To Seller:** Jason W. Taylor  
Huntsville City Board of Education  
200 White Street SE  
Huntsville, AL 35801  
Phone: (256) 428-6852  
Email: [jason.taylor@hsv-k12.org](mailto:jason.taylor@hsv-k12.org)

Y. Albert Moore, III  
Lanier Ford Shaver & Payne P.C.  
2101 West Clinton Avenue  
Suite 2101  
(Post Office Box 2087)  
Huntsville, Alabama 35805(35804)  
Phone: (256) 535-1100  
Fax: (256) 535-9322  
E-mail: [yam@lanierford.com](mailto:yam@lanierford.com)

**To Purchaser:** City of Huntsville  
P.O. Box 308  
Huntsville, AL 35804  
Phone: (256) 427-5000  
Phone: (256) 427-5026

Peter S. Joffrion  
City Attorney  
P.O. Box 308  
Huntsville, Alabama 35804  
Fax: (256) 427-5043  
[Peter.Joffrion@huntsvilleal.gov](mailto:Peter.Joffrion@huntsvilleal.gov)

17. **Defaults/Sole Remedy/Attorneys Fees.** Should one party be ready, willing and able to close the sale and purchase of the Property in accordance with this Agreement, and should the other party fail to carry out this Agreement in accordance with all of its agreements, conditions, covenants, representations, statements, terms and understandings, the nondefaulting party shall accept the Non-Refundable Earnest Money as liquidated damages, and in such event, neither Seller nor Purchaser shall have any further claim or liability against the other for and on account of this Agreement and/or the Property and this Agreement shall be terminated. In light of the difficulty in ascertaining monetary damages in the event of a default hereunder, Seller and Purchaser expressly agree and covenant that the foregoing remedy provided for the nondefaulting party shall be the nondefaulting party's sole remedy. In the event of litigation over this Agreement, the Earnest Money and/or the Property, the prevailing party shall be entitled to its actually incurred reasonable attorney's fees and court costs.

18. **Time.** Time is of the essence of this Agreement.

19. **Entire Agreement/Merger.** This Agreement, along with all exhibits and attachments or other documents affixed hereto or referred to herein, embodies the entire agreement, intent and understanding of Seller and Purchaser as to the transaction evidenced hereby and merges herein all prior and contemporaneous agreements, conditions, covenants, discussions, provisions, representations, statements, terms, warranties and understandings heretofore made between Seller and Purchaser as to such transaction, whether written, oral or both. Any agreements, conditions, covenants, discussions, provisions, representations, statements, terms, warranties or understandings by and between Seller and Purchaser as to such transaction not contained herein are and shall be null and void, unenforceable and of no force and effect.

20. **Applicable Law/Jurisdiction/Venue.** This Agreement is made in, and thus shall be construed, controlled, enforced, governed and interpreted in accordance with its plain meaning in accordance with the internal laws of, the State of Alabama, without regard to principles of conflicts of laws. For any action concerning this Agreement (a) jurisdiction shall be in the appropriate state or federal courts sitting in Alabama and (b) venue (i) in Alabama state courts shall be in Madison County, Alabama and (ii) in

Alabama federal courts shall be in the United States District Court for the Northern District of Alabama, Northeastern Division.

21. **Construction.** As this Agreement has been drafted jointly by Seller and Purchaser, after extensive consultation with their respective counsel, no presumption against the draftsmen of this Agreement shall be indulged in the construction and/or interpretation hereof.

22. **Severability.** If, for any reason or no reason, any agreement(s), condition(s), covenant(s), provision(s), representation(s), statement(s), term(s), warranty(ies) or understanding(s) of this Agreement (whether material to the bargain of the Seller and the Purchaser or not) should be declared illegal, null and void, unconstitutional and/or unenforceable, in whole or in part, by any court of competent jurisdiction, the remainder of this Agreement shall not be impaired and shall remain in full force and effect according to its remaining agreements, conditions, covenants, provisions, representations, statements, terms, warranties and understandings.

23. **Survival.** Any agreements, conditions, covenants, provisions, representations, statements, terms, warranties or understandings contained in and made pursuant to this Agreement not performed at the time of the execution and delivery of this Agreement from Seller to Purchaser shall survive (a) the execution and delivery of this Agreement, (b) execution and delivery of Warranty Deed, and (c) the consummation of the transaction evidenced hereby.

24. **Binding Effect.** Seller, and Seller's successors and assigns, and Purchaser, and Purchaser's successors and assigns shall be fully bound by this Agreement and each and every agreement, covenant, condition, provision and term hereof. Each and every agreement, covenant, condition, provision and term of this Agreement inures, and shall inure, to the benefit of Seller, and Seller's successors and assigns, and Purchaser, and Purchaser's successors and assigns.

The successors and assigns of Purchaser shall be fully bound by this Agreement and each and every agreement, covenant, condition, provision and term hereof just as Purchaser is bound.

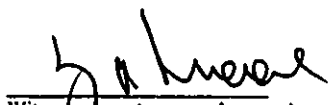

25. **Amendment, etc.** Neither this Agreement nor any agreement, condition, covenant, provision, representation, statement, term, warranty or understanding hereof, shall be amended, changed or modified in any respect, nor may any estoppel, novation or waiver regarding the same be effectuated, without Seller and Purchaser first executing a writing, in equal dignity to this Agreement, embodying their complete and full agreement and understanding as to such amendment, change, modification, novation or waiver.

26. **Captions.** The captions of this Agreement are for convenience and reference only and in no way define, describe, extend or limit the intent or scope of this Agreement.

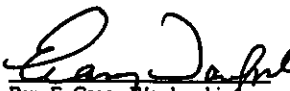
27. **Effective Date.** For purposes of the calculation of any time periods set forth in this Agreement, the Effective Date of this Agreement is the date set forth below and shall be counted as the first day of any such time periods.

28. **Counterparts:** This Agreement is executed in multiple original counterparts, but all of which together constitute but one agreement.

IN WITNESS WHEREOF, Seller and Purchaser have caused these presents to be executed as of the \_\_\_\_ day of \_\_\_\_\_, 2013, being the Effective Date hereof.

  
Witness  
  
Witness

SELLER:  
HUNTSVILLE CITY BOARD OF EDUCATION

  
By: E. Casey Wardynski  
As its: Superintendent

PURCHASER:  
THE CITY OF HUNTSVILLE, ALABAMA  
a municipal corporation

ATTEST:

Charles E. Hagood

By: Tommy Battle  
As its: Mayor

STATE OF ALABAMA )  
 )  
COUNTY OF MADISON)

**ACCEPTANCE AND APPROVAL BY BROKER**

Bill Poole Realty ("Poole") hereby executes the foregoing Agreement to indicate (a) Poole's receipt of the \$10,000.00 Earnest Money and (b) Poole's acceptance and approval of its duties, obligations and responsibilities thereunder.

Dated as of the \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Witness

**BILL POOLE REALTY**

By: \_\_\_\_\_  
As its: \_\_\_\_\_

\_\_\_\_\_  
Witness

S:\YAM\Huntsville City Schools - BOE\East Clinton\Broadway sales contract.doc



# ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal

Council Meeting Date: 5/23/2013

Department Contact: Peter Joffrion

Phone # 427-5026

Contract or Agreement: East Clinton Elementary School

Document Name: Sale and Purchase Agreement for East Clinton Elementary

City Obligation Amount:

Total Project Budget: 1,500,000

Uncommitted Account Balance: 1,500,000

Account Number:

## Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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## Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name:
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Department	Signature	Date
1) Originating		
2) Legal		
3) Finance		
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		